REMARKS

Reconsideration is respectfully requested.

Claim 17 remains in this application. Claims 1 through 16 have previously been cancelled. No claims have been withdrawn. Claims 18 through 26 have been added.

The Examiner's rejections will be considered in the order of their occurrence in the Office Action.

Paragraphs 1 through 2 of the Office Action

It is noted that, on the "Office Action Summary" sheet, the box next to "This action is final." has been marked, but since this is the first action after the filing of the RCE in this case, and the publications upon which the rejection of claim 17 is based has been changed, it is submitted that the box was inadvertently marked and that the current Office Action is not in actuality a "final" Office Action.

Paragraphs 4 and 5 of the Office Action

Claim 17 has been rejected under 35 U.S.C. §112 (second paragraph) as being indefinite.

The above amendments to claim 17 are believed to clarify the requirements of the rejected claims, especially the particular points identified in the Office Action.

Withdrawal of the §112 rejection of claim 17 is therefore respectfully requested.

Paragraphs 6 through 8 of the Office Action

Claim 17 has been rejected under 35 U.S.C. Section 103(a) as being unpatentable over "Visual Rota from CDT" (www.btinternet.com/vrota) in view of Fields et al. (U.S. 5,111,391).

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It is asserted in the Office Action that the "Visual Rota" teaches swapping shifts between employees based upon rules, and that the Fields patent is merely relied upon to show what those rules might be.

However, the Visual-Rota publication, and the "rules" disclosed therein, are only concerned with maintaining the internal integrity of the schedule. In other words, the disclosure of Visual-Rota is directed to keeping the schedule balanced and avoiding holes in the schedule where there is no one working (such as may be caused by swapping time "off" for time "on"). The primary purpose of the Visual-Rota system is to make sure that someone is working when an employee is needed to work, and this is reflected in the two "rules" set forth (with respect to shift swapping) that merely make sure that, when employees attempt to swap shifts, a hole is not left in the shift schedule where there shouldn't be. Thus, the swapping of shifts in the Visual Rota system is performed without regard for the qualification (or other characteristic) of the employee as long as the internal integrity of the schedule is maintained.

In contrast, the Fields patent discusses rules that pertain to employee qualifications in forming an original schedule by the employer, and does not discuss how or why these rules might be applied to shift swapping between employees, or even that such types of rules should be or need to be applied to shift trades made between employees.

The most recent Office Action states:

> Furthermore, "Visual Rota from CDT" discloses rules about trading shifts and Fields et al. discloses rules about shift assignment. It is old and well known that places of employment require that employees give notice by a specific deadline in order to do things such as take leave, quit, swap shifts, etc. For example, in order for an employee to withdraw from employment with a business, he or she must give notice a specific length of time before quitting so that the business can find someone to fill said employee's responsibilities before said employee

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> leaves. It would have been obvious to one of ordinary skill in the art at the time of the invention to include in the swap rules of "Visual Rota from CDT' a requirement of a specific length of time between the shift swap and the shift in order to increase the efficiency of the schedule and the timeliness of the company by making sure that all areas involved are appropriately staffed. "Visual Rota from CDT" discusses that finding people to definitively work the assigned shifts reduces problems, as stated on page 3, section 3.

As this contention basically repeats the same allegation made in the earlier Office Action, it is again noted that the example given in the Office Action is not applicable here for at least three significant reasons. Firstly, the invention (and the cited references) do not deal in any sense with an employee leaving his or her employment, in which case a permanent replacement must be found not for only one shift but *all* shifts of that employee and which one can appreciate is a much more time consuming task requiring a significantly longer amount of lead time than merely changing shifts. Secondly, and perhaps more significantly, the "specific length of time" that is referred to in the Office Action to bolster the argument does not exist--an employee can quit his or her job at any time without having to stay on for any period of time after the giving of notice. One may give advance notice (of, for example, two weeks) to the employer prior to leaving as a courtesy to the employer and/or stay on good terms with the employer for future job references, but that is certainly not required of the employee to leave his or her job, or one could be subject to involuntary servitude. In other words, one can simply leave his or her job today and not be legally bound or legally liable to the employer because prior notice was not given. Thirdly, as noted above, the Visual-Rota reference clearly suggests to one of ordinary skill in the art that "staff leaving" can be predicted, and thus tends to decrease the impact of having prior notice of the quitting of an employee.

The above distinction is significant in that claims 17 and 18 *requires* "a minimum time period" before the proposed shift trade before confirming

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the shift trade, and rejecting the shift trade if the criteria is not met. This is yet another way in which the analogy suggested in the Office Action does not hold, as an employer cannot "reject" an employee's attempt to quit merely because the employee has not given sufficient notice of his or her leaving the employment. Again, the employer cannot force an employee to stay at a job if that person does not want to, so any notice is optional and not obligatory.

Also, it appears that the statements in the Office Action attempt to assert that quitting one's job is equivalent with merely taking leave or swapping a shift, so that the "two week notice" assumption of quitting employment can be applied to swapping shifts. It is submitted that these activities of employment are not analogous. Swapping shifts and taking leave require a continuing and future relationship with the employer, and thus there is a desire on the part of the employee to follow any rules that might apply. This is significantly different, and distinguishable from, an employee's act of quitting his or her job, where no future relationship with the employer is anticipated and the employee's interests are often contrary to the needs of the employer.

Further, the Office Action fails to point out any example of a requirement by an employer of notice of a "specific length of time" before leaving a job. The allegation that such a requirement is "well-known" was traversed in the previous response (and applicant contended that such a practice is in fact only a courtesy that may or may not be followed, as noted above), but the present Office Action fails to provide any evidence that this is actually a requirement (or "rule") and not a courtesy.

The Office Action further contends that "[I]t would have been obvious... to require a specific length of time between the shift swap and the shift in order to increase the efficiency of the schedule and the timeliness of the company by making sure that all areas involved are

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appropriately staffed". However, nothing in the references suggests that a shift swap performed a "specific length of time" before the shift increases the "efficiency" or "timeliness" of the system, and nothing in the Office Action explains how efficiency is increased by increasing the notice. While this aspect of the claimed invention derives benefits from implementing negotiated agreements and providing time to check or verify training criteria, it is significant that neither of these benefits (or any benefits at all) are mentioned in the cited references for increasing the amount of time prior to the shift required to make the shift swap.

Further, claims 17 and 18 each require "restricting access to information about the trade of the first shift for the second shift upon confirmation of the trade". This requirement of claim 18 makes sure that others not participating in the shift trade are not made privy to any and all of the trades that are being made, which is generally desirable for employee privacy but may also be required by a union contract dealing with such matters.

Although it is alleged in the Office Action that this required feature flows from the teaching of the Visual-Rota and Fields references, not one portion of either reference is cited in support of such a claim. These references cannot teach or suggest what is not even alluded to in their disclosures, and therefore it is submitted that the prior art would not lead one of ordinary skill in the art to this requirement of claims 17 and 18.

It is therefore submitted that the cited references, and especially the allegedly obvious combination of the Visual-Rota publication and the Fields patent] set forth in the rejection of the Office Action, would not lead one skilled in the art to the applicant's invention as required by claims 17 and 18. Further, added claims 19 through 26, also include the requirements discussed above and therefore are also submitted to be in condition for allowance.

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Withdrawal of the §103(a) rejection of claim 17 is therefore respectfully requested.

CONCLUSION

In light of the foregoing amendments and remarks, early reconsideration and allowance of this application are most courteously solicited.

Respectfully submitted,

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